

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Improving Competitive Broadband Access to)	GN Docket No. 17-142
Multiple Tenant Environments)	
)	
Petition for Preemption of Article 52 of the San)	MB Docket No. 17-91
Francisco Police Code Filed by the Multifamily)	
Broadband Council)	

COMMENTS OF CENTURYLINK

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EXECUTIVE SUMMARY

As the Commission has long recognized, multiple tenant environments (MTEs) present unique legal, policy, and economic issues that justify allowing some forms of exclusivity through “preferred provider” arrangements, such as bulk billing and exclusive marketing arrangements, while barring exclusive *access* arrangements. This balanced policy framework remains superior to one that bans all types of preferred provider relationships, which would significantly reduce investment incentives in many MTEs. Or, at the other end of the spectrum, one that enables property owners and preferred providers to prevent competing providers from fulfilling reasonable requests for service in the MTE.

Most MTE owners charge reasonable access fees, if any, and welcome competitive investment and choice. But some do not. In recent years, CenturyLink has encountered three worrisome and growing trends when trying to fulfill requests for service in MTEs:

- *Unreasonable “Pay to Play” Fees.* Over the past two decades, MTE owners increasingly have sought to “monetize” access to their property by imposing excessive access fees of various forms, including through “door fees” and revenue sharing arrangements. These fees often significantly exceed the MTE owner’s cost of accommodating service providers’ access to the property, can account for 20 to 30% of the cost of extending service to a customer in an MTE, and sometimes cause CenturyLink to reject MTE tenants’ request for service. Revenue sharing arrangements are especially pernicious, particularly in the commercial context, because they incent property owners to steer business to their preferred service provider, at times through misleading communications, even if the tenant would rather obtain service from another service provider that can better serve its needs.
- *Misinformed MTE Owners and Tenants.* Both MTE owners and tenants frequently are misinformed about the nature of the MTE owner’s preferred provider arrangement. It is not uncommon for CenturyLink to be told by an MTE owner that its preferred provider arrangement precludes CenturyLink from providing facilities-based service in the MTE. In July, for example, CenturyLink was told by an MTE owner in Hawaii: “Per our ground lease telecom and internet services must be provided by [Preferred Provider]. We are not permitted to allow any other providers for these services at this time.” In other MTEs, property owners have told tenants, directly or indirectly, in recent months that they “require all tenants to use [their Preferred Provider],” or that the tenant is “not eligible for service from any vendor other than [the Preferred Provider] who is the mall’s vendor,” or that “[n]o other vendors are allowed on mall property.” Whether the preferred provider agreements actually contain these exclusive access restrictions is irrelevant. If MTE owners and tenants believe they do, those tenants will be deprived of their provider of choice and the benefits of meaningful broadband competition.
- *De Facto Exclusive Access Arrangements.* CenturyLink also has seen an uptick, especially in shopping malls, of MTE owners refusing to allow CenturyLink to fulfill requests for service in the MTE except through a wholesale arrangement with the property owner’s preferred provider. In some cases, the mall owner appears to have delegated all telecommunications issues in the mall to the preferred provider,

including requests for access from other providers. Whether called exclusive wiring or marketing arrangements, revenue sharing arrangements, or something else, these are in effect exclusive access arrangements, because they limit on-net access to the MTE to that preferred provider. Such restrictions have made it difficult for CenturyLink to fulfill requests from national and regional retailers to provide on-net service to their mall locations. Indeed, in a three-day period in June, mall owners refused to allow CenturyLink direct access to tenants in Hawaii, New Jersey, California, and Texas, and instead directed it to obtain wholesale access from their preferred provider. These mandated off-net configurations are more expensive, less reliable, more difficult to troubleshoot, and harder to upgrade. They also prevent business customers from obtaining the true network diversity their mission-critical operations sometimes demand.

CenturyLink recommends the following rule changes to address these market failures:

- Prohibit providers from entering into revenue sharing and other access agreements that compensate the MTE owner beyond its actual cost of enabling service and performing any other contractual obligations on the provider's behalf.
- Require providers to disclose publicly in plain English the existence and content of preferred provider agreements.
- Preclude providers from entering into a preferred provider agreement in an MTE unless competing on-net services are permitted.
- Reaffirm that if a provider controls the ducts, conduits, and rights-of-way in an MTE, it must provide just, reasonable, and nondiscriminatory access to that infrastructure.
- Consider regulating MTE access services that are the exclusive means of reaching MTE tenants.

In addition, the Commission should extend its current prohibition on exclusive access arrangements to rooftop facilities, which will enable providers such as CenturyLink to use fixed wireless services in MTEs when efficient and cost effective.

These common-sense actions will promote facilities-based investment and competition for the benefit of those who live and work in MTEs.

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COMMENTS OF CENTURYLINK

CenturyLink, Inc.¹ hereby files these comments in response to the *Notice* in the above-captioned dockets.²

I. INTRODUCTION

CenturyLink commends the Commission for revisiting its building access rules. As the Commission notes, millions of Americans live or work in multiple tenant environments (MTEs) and deserve access to state-of-the-art broadband services and a choice of providers for those services. While fierce facilities-based competition is now the norm in telecommunications markets, MTEs continue to require special consideration.

In this submission, CenturyLink provides its perspective on these issues based on its extensive experience as a nationwide provider of business and residential services in MTEs, sometimes operating as a historical incumbent but more often as a non-incumbent provider.

¹ This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

² *Improving Competitive Broadband Access to Multiple Tenant Environments; Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, GN Docket No. 17-142, *et al.*, Notice of Proposed Rulemaking and Declaratory Ruling (July 12, 2019) (*Notice or Declaratory Ruling*).

Although most MTE owners charge reasonable access fees, if any, and welcome competitive investment on their property, that is not uniformly the case. In recent years, CenturyLink has increasingly encountered unreasonable access fees and other serious impediments to serving MTEs, including refusals to allow on-net access. These practices violate the spirit, if not always the letter, of the Commission's rules. Given these trends, CenturyLink believes that Commission action is both appropriate and necessary to ensure that property owners and service providers act in the best interest of those who live and work in MTEs.

CenturyLink outlines in this submission several potential updates to the Commission's building access rules to address these growing concerns and advance the Commission's goal of encouraging facilities-based broadband investment and competition.

II. BALANCING EXCLUSIVITY WITH COMPETITIVE CHOICE IN MTEs.

The Commission has long recognized that deployment to MTEs presents unique legal, policy and economic issues. The concentrated demand in these properties makes them attractive targets for broadband, video, and other wireline communications services, but the internal wiring to provide these services often requires significant investment. Moreover, especially in older properties, limited capacity in conduits and risers may limit the number of providers that can place their own wires in the MTE. And, most importantly, unlike in the typical residential or business setting, the end user subscriber generally does not own or control access to the property and may have different interests and priorities than the property owner.

These considerations led the Commission to adopt a balanced and flexible regulatory policy to create incentives for investment without foreclosing competition in MTEs. The Commission generally bars service providers from entering arrangements with property owners for exclusive *access* to MTEs, while permitting them to contract for other forms of exclusivity, hereinafter referred to as "preferred provider arrangements," such as bulk billing, exclusive

marketing, and exclusive wiring agreements. At least in theory, these arrangements allow other providers to offer competing services in the MTE. In practice, the feasibility and likelihood of such competitive entry in a given MTE depends on whether a business case can be made to deploy facilities at that property, despite the existence of a preferred provider arrangement, and whether the property owner and/or preferred provider actively seek to impede the competitor's entry into the MTE.

The balance between exclusivity and competitive choice has never been easy. In residential MTEs, for example, a bulk billing arrangement may become a de facto exclusive access arrangement if other providers cannot successfully compete against a service that is subsidized through home owners' association (HOA) dues. This absence of competitive choice, in turn, may diminish the preferred provider's incentive to upgrade service in the MTE, at least during the term of the preferred provider arrangement. It also may prevent MTE tenants from obtaining service from other providers that may be better able to serve that customer's needs. But, on the other side of the coin, fiber deployment in certain MTEs may not be economically justifiable for any provider unless it has a reasonable expectation of winning most of the demand in that MTE, which may require the advantages gained through a preferred provider arrangement. These knotty issues are made knottier when an MTE owner seeks to profit from charging service providers for access to the MTE.

Despite these difficulties, the Commission's balanced policy framework remains superior to one that bans all types of preferred provider relationships, which would significantly reduce investment incentives in many MTEs, or, at the other end of the spectrum, enables property owners and preferred providers to prevent competing providers from fulfilling reasonable requests for service in the MTE. It also is critical that the Commission continuously monitor the

line between exclusivity and competitive choice to address changing market conditions, as it is doing in this proceeding. CenturyLink highlights in this filing some of those changing factors.

The Commission also should recognize that the proper balance between exclusivity and competitive choice may vary between residential and commercial MTEs. Opportunities for exclusivity are more likely necessary in residential MTEs, which tend to generate lower per-subscriber revenues than commercial MTEs. And, at the same time, competitive choice may be more important in commercial settings where tenant customers are more likely to have multi-location contracts with a particular provider for customized service offerings that are not available from the MTE owner's preferred provider. Thus, though there are advantages to MTE rules that apply uniformly to residential and commercial MTEs, the Commission should remain open to adopting different rules based on the evidence gathered in this proceeding.

As a nationwide provider of facilities-based commercial and residential services, CenturyLink's position as an incumbent or competing provider varies from property to property. CenturyLink is the incumbent in some MTEs, but typically is not. It constantly evaluates potential business cases for deploying fiber throughout given MTEs, with or without a preferred provider arrangement, while frequently seeking access to others in which another provider has a preferred provider relationship with the MTE owner. Given these diverse interests, CenturyLink seeks regulatory policies in this area that are clear, fair, and simple.

While the technical details of the Commission's MTE rules are important, the incentives those rules engender are critical. For instance, if a provider lacks a reasonable expectation of recovering its investment in an MTE, it will have little incentive to make that investment. As the Commission correctly found in the *Declaratory Ruling*, as well as in other contexts, sharing obligations create disincentives for facilities-based deployment. The Commission also must be

careful to foster appropriate incentives for MTE owners, to prevent them from using their control over access to the MTE to profit themselves at the expense of their tenants.³

Transparency is also important. All parties in an MTE -- the property owner, tenants, the preferred provider, and competing providers -- should have a clear and common understanding of their rights and responsibilities. Absent such an understanding, the content of the preferred provider agreement is irrelevant. If the property owner believes that its preferred provider has an exclusive access agreement, it will likely refuse requests for competitive access and tell its tenants they must obtain service from the preferred provider. If the tenants believe that to be the case, they will likely order service from the preferred provider even if their needs would be better met by another provider. And if a competing provider encounters such misinformation when seeking to fulfill a request for service, it will incur unnecessary and costly delays and may lose the customer altogether.

Applying these principles in this proceeding will enable the Commission to optimize the balance between investment and competitive choice in MTEs despite the following trends that are making this more challenging.

III. THREE RECENT TRENDS THREATEN THIS BALANCED POLICY.

Most MTE owners charge reasonable access fees and welcome competitive investment and choice on their property. But some do not. In recent years, CenturyLink has encountered three worrisome and growing trends when trying to fulfill requests for service in MTEs:

³ The Commission recognized as far back as 2000 that, at least in some instances, “building owners exercise market power over telecommunications access.” *Promotion of Competitive Networks in Local Telecommunications Markets*, et al, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983, at 22990 ¶ 12 (2000).

excessive access fees, MTE owners and tenants that are misinformed about their rights and responsibilities under applicable preferred provider arrangements, and MTE owners that prohibit on-net service except by their preferred provider. None of these trends serves the interests of tenant subscribers, and each directly conflicts with the Commission's goal of facilitating investment and competition in MTEs.

A. Unreasonable "Pay to Play" Fees.

Over the past two decades, MTE owners increasingly have sought to "monetize" access to their property by imposing excessive fees of various forms on service providers, including through above-cost "door fees" and revenue sharing arrangements. These fees have grown in frequency and magnitude with the development of telecommunications competition. In earlier times, access fees and revenue sharing arrangements were no more common for communications services than for water, electric, and other utility services. Tenants needed these services, so the MTE owner had no choice but to allow access to its property by the monopoly providers of those services. The only question was how the cost of deploying service within the MTE would be allocated. Competition changed that. Multiple communications providers now vied for the opportunity to serve desirable MTEs, and some were willing to pay the property owner for that privilege, especially if they were accorded preferential treatment, such as an exclusive marketing or exclusive wiring arrangement. A new market had been created in which some MTE owners sold access to their property to the highest bidder. Unfortunately, such a model generally causes MTE tenants to pay more for service than they otherwise would, to cover the fees paid to the property owners, and to enjoy fewer competitive choices and innovative service offerings.

MTE owners have obvious incentives to maximize such access fees, especially if they can do so through transactions with service providers that are not apparent to their tenants. These property owners are frequently aided in this endeavor by outside consultants committed to

driving “revenues and savings right to [the owners’] bottom line.”⁴ These fees often significantly exceed the MTE owner’s cost of accommodating service providers’ access to the property. For example, the owner of MTEs in more than 20 states imposes a flat fee of \$300 per month for access to each individual tenant, a fee that has no apparent connection to the property owner’s minimal administrative costs of allowing CenturyLink access to the property. Revenue sharing arrangements are especially pernicious, particularly in the commercial context, because they incent property owners to steer business to their preferred service provider, sometimes through misleading communications, even if the tenant would rather obtain service from another provider that can better serve its needs.

In these situations, the property owners’ interests are only partially aligned with those of its tenants. To be sure, both have an interest in maintaining the availability of reasonable quality broadband, video, and other services in the MTE. Without that, the property owner risks losing tenants, at least over the long term. Beyond that, however, their interests diverge. Most tenants want a meaningful choice of providers and services, rather than being limited to one provider of the property owner’s choosing. But MTE owners seeking to monetize access to their property have a conflicting incentive to restrict access in a way that maximizes their revenues. If that restriction also enables them to avoid dealing with multiple providers, all the better. And certain providers are more than willing to offer such “turn-key” solutions. In revising its rules in this area, the Commission therefore cannot simply assume that MTE owners will act in the best

⁴ MDU Consulting Group, LLC, website, <https://mduconsultinggroup.com/> (last visited Aug. 18, 2019) (“We earn our fee based on a percentage of the increased monetary value we negotiated for your property.”). *See also* Broadband Agreement Specialists, Inc., website, <https://www.broadbandagr.com/multifamily.html> (“Our goal is to obtain door fees, on-going revenue-sharing commissions and common area ‘no charge’ courtesy services with our negotiated agreements.”)

interest of their tenants. Most will, but others will not. CenturyLink has experienced this market failure first-hand.

CenturyLink generally does not enter into revenue sharing arrangements, especially in commercial MTEs, but it has been forced to pay other unreasonable fees to serve MTEs, especially in major markets, including inflated attorneys' fees, "administrative" fees, and "riser management" fees. These fees sometimes account for 20 to 30% of the cost of extending service to a customer in an MTE. And, in some cases, the fees cause CenturyLink to reject MTE tenants' requests for service, simply because CenturyLink no longer has a viable business case to serve the tenant.

The fact that most property owners do not impose excessive fees strongly suggests those fees are not necessary to enable high quality communications services in MTEs, but rather are designed to improve the MTE owners' bottom line. If the Commission were to prohibit providers from entering into revenue sharing agreements, that does not mean that the property owners would lack the ability to recoup their costs. As one real estate consultant has noted, for example, MTE owners sometimes do so by requiring service providers to reimburse the MTE owner for wiring or other facilities the owner has purchased and installed.⁵ Thus, barring these concerning arrangements will not in itself discourage MTE owners from making investments in broadband infrastructure to attract and keep tenants.

B. Misinformed MTE Owners and Tenants.

In CenturyLink's experience, both MTE owners and tenants frequently are misinformed about the nature of the MTE owner's preferred provider arrangement. It is not uncommon for

⁵ Reply Comments of Hubacher & Ames, PLLC, GN Docket No. 17-142, at 13 (filed Aug. 22, 2019).

CenturyLink to be told by an MTE owner that its preferred provider arrangement precludes CenturyLink from providing facilities-based service in the MTE. In July, for example, CenturyLink was told by an MTE owner in Hawaii: “Per our ground lease telecom and internet services must be provided by [Preferred Provider]. *We are not permitted to allow any other providers for these services at this time.*”⁶ It is unlikely, though possible, that the MTE owner’s preferred provider arrangement contains such a blatant violation of the Commission’s rules. More likely, the MTE owner or its agent is simply misinterpreting that agreement as imposing a blanket ban on other competitors providing service in the MTE. In any case, what matters is how the agreement is implemented. If the MTE owner interprets that agreement to require it to refuse competing providers’ requests for on-net access to the MTE, as is frequently occurring in some MTEs, the actual language of the preferred provider agreement is irrelevant. Tenants will be deprived of their provider of choice and the benefits of meaningful broadband competition.

Obviously, MTE tenants are even more likely than MTE owners to be unaware or misinformed about the content of the MTE owner’s preferred provider agreement. Because they are not a party to that agreement, they must rely on what they are told by the MTE owner and its agents. And what they are told, not infrequently, is that they must get service from the preferred provider, rather than their provider of choice. Again, whether these statements are consistent with the language in the preferred provider agreement is irrelevant. If the MTE owner tells the tenant, either directly or indirectly, that it “require[s] all tenants to use [its Preferred Provider],”⁷ or that the tenant is “not eligible for service from any vendor other than [the Preferred Provider]

⁶ See Attachment 1 (surnames and other personal-type information have been redacted from this and the other attachments to this submission).

⁷ See Attachments 3, 7.

who is the malls [sic] vendor,”⁸ or that “[n]o other vendors are allowed on mall property,”⁹ that preferred provider effectively has an exclusive access arrangement in the MTE.

This misinformation, at a minimum, results in delay and additional cost. Frequently it takes three or even four weeks to clarify with the property owner that the tenant can, in fact, use CenturyLink. In some cases, CenturyLink can then provide service to the tenant, but, in others, the tenant cannot wait that long. Its urgent need for service causes it to opt for the property owner’s preferred provider, regardless of whether that provider is best suited to meet the tenant’s needs.

C. *De Facto Exclusive Access Arrangements.*

CenturyLink also has seen an uptick, especially in shopping malls, of MTE owners refusing to allow CenturyLink to fulfill requests for service in the MTE except through a wholesale arrangement with the property owner’s preferred provider. These providers often market themselves as “one-stop-shop” solutions, offering to manage all the MTE’s communications needs, including interfacing with tenants, while providing the MTE owner an ancillary revenue stream. Whether called exclusive wiring or marketing arrangements, revenue sharing arrangements, or something else, they are in effect exclusive access arrangements, because they limit on-net access to the MTE to that preferred provider.

While these arrangements may benefit the MTE owner, those benefits do not extend to its tenants. CenturyLink frequently wins contracts with national and regional retailers, such as department stores and restaurant chains, to provide service to all or many of the retailer’s locations, some of which are in standalone buildings and others in MTEs, such as shopping

⁸ See Attachment 4.

⁹ See Attachment 6.

mall. When CenturyLink receives a request for service in a shopping mall under one of these contracts, it contacts the mall owner to obtain on-net access to the property. In recent months, CenturyLink has had increasing difficulty gaining such access. It has been told repeatedly by mall owners that their preferred provider is the only on-net provider in the mall and that CenturyLink's only way to reach the tenant customer is to buy wholesale access from that provider. Indeed, in a three-day period in June, mall owners refused to allow CenturyLink direct access to tenants in Hawaii, New Jersey, California, and Texas, due to the mall owner's preferred provider arrangement.¹⁰ In some cases, the mall owner appears to have delegated all telecommunications issues in the mall to the preferred provider, including requests for access from other providers.¹¹

Wholesale access to the mall is much less cost-effective than CenturyLink deploying its own facilities to reach the tenant. This is especially true if CenturyLink ends up serving more than one customer in the mall, because the wholesale provider typically requires CenturyLink to pay an additional monthly fee for each customer CenturyLink serves in the mall. These increased costs result in more expensive services in MTEs, as CenturyLink typically passes through the preferred provider's access fees.

CenturyLink's inability to obtain on-net access to the customer also results in an inferior service. Generally, the tenant has chosen CenturyLink because of its broad suite of facilities-based services provided over its robust national and international network. Forcing CenturyLink to hand off traffic to another provider for termination within the MTE prevents CenturyLink from fulfilling the tenant's desire for an end-to-end CenturyLink service. Because CenturyLink

¹⁰ See Attachments 1, 4, 5, 6.

¹¹ See Attachment 2.

must hand off traffic to another provider, it cannot perform end-to-end testing when it activates service or proactively monitors the circuit once it is in service. Thus, the tenant's circuit is inherently less reliable, more difficult to troubleshoot, and harder to upgrade. Rather than looking to one provider in the event of a service problem, two are now involved, potentially resulting in longer response times to restore service and complete repairs.

Indeed, some tenants, such as financial services firms, explicitly specify in their contract that CenturyLink must provide the requested service on-net (*i.e.*, solely over CenturyLink's network on an end-to-end basis), often because they need diversity to maintain continuity in the event of a network or Internet outage. While a single provider may offer diverse routing, it cannot provide the same level of diversity as services provided over independent networks. Other tenants seek on-net service to guarantee a specified quality of service, or Service Level Agreement, for latency or other network performance characteristics. Whatever the reason, limiting such a tenant to service provided through a wholesale arrangement with the MTE owner's preferred provider forces that customer to settle for service that does not fully meet its business needs.

The preferred provider's control of the communications infrastructure and services in the MTE also gives it little incentive to offer reasonable rates, terms, and conditions for its wholesale access service. It stands in a role very similar to a traditional utility that controlled the ducts, conduits, and rights-of-way or sole wire in an MTE. If the preferred provider imposes unreasonable terms, the competing providers' only recourse is to decline the request for service, which unfortunately CenturyLink sometimes has had to do.

IV. RECOMMENDATIONS TO ADDRESS THESE MARKET FAILURES.

In the last section, CenturyLink catalogued a growing trend of troubling tactics being used by some providers and MTE owners to further their own interests, often at the expense of

MTE tenants. While these tactics may comply with the letter of the Commission’s rules, they frequently violate their spirit. They also directly undermine the Commission’s intention in this proceeding to “encourage facilities-based broadband deployment and competition in MTEs.”¹² Thus, an update and refinement of the Commission’s building access rules are in order.

In suggesting such rule changes, CenturyLink is mindful of the need to create and maintain appropriate incentives for property owners and service providers to invest in MTEs. CenturyLink does not seek to deprive property owners of the opportunity to recover the true costs they incur in allowing access to their property for the deployment and provision of communications services. Similarly, CenturyLink does not seek to eliminate reasonable preferred provider and exclusivity arrangements, which are sometimes necessary to provide the certainty for providers, including CenturyLink itself, to deploy fiber and other facilities throughout an MTE. CenturyLink’s intent simply is to ensure that competing providers have a meaningful opportunity to fulfill MTE tenants’ requests for facilities-based service.

The Commission can accomplish this goal by prohibiting providers from entering agreements that compensate MTE owners beyond their actual cost of enabling service in the MTE and performing any other contractual obligations on the provider’s behalf; by requiring providers to disclose the existence and content of their preferred provider agreements, especially to MTE tenants and competing providers; by prohibiting preferred provider agreements with MTE owners that refuse to allow competing on-net service in the MTE; by reaffirming that if a provider controls the ducts, conduits, and rights-of-way in an MTE, it must provide just, reasonable, and nondiscriminatory access to that infrastructure; and by considering regulation of MTE access services that are the sole means of reaching MTE tenants.

¹² Notice at ¶ 2.

A. Prohibit Providers from Entering into Revenue Sharing and Other Access Agreements that Compensate the MTE Owner Beyond Its Actual Cost.

As noted, while most MTE owners charge reasonable access fees, if they charge any at all, and welcome competition on their property, there is a growing trend of MTE owners imposing excessive access fees and entering into arrangements that limit on-net access to a single preferred provider. The Commission can address this unfortunate trend by further restricting the types of arrangements in which providers can enter with MTE owners. Specifically, the Commission should prohibit providers from entering into arrangements that compensate MTE owners for more than their actual cost of enabling service in the MTE and performing any other contractual obligations on the provider's behalf.¹³ By their nature, revenue sharing agreements fail this test if they award the MTE owner a pro-rata share of the provider's revenues in the building without regard for the owner's actual costs of enabling service and fulfilling applicable contractual obligations. Similarly, agreements that require preferred providers to pay door fees that exceed these actual costs should be prohibited. Aside from increasing the price of communications services in the MTE, these agreements create an unhealthy incentive for the MTE owner to steer business to the preferred provider and deter entry by competing providers. This is especially problematic in commercial MTEs where, absent unreasonable access fees, competitive entry is likely feasible. Prohibiting these types of agreements would still allow building owners to be compensated for their actual costs of enabling service within an MTE and performing any other contractual obligations on the provider's behalf.

¹³ Such contractual obligations might include, for example, a commitment to market the preferred provider's services in the MTE.

CenturyLink recognizes that implementation and enforcement of this restriction will not be easy, as the MTE owner's actual costs may be known only to that owner. However, the Commission has dealt with similar issues in other contexts such as for infrastructure covered by Section 224, for which owners are entitled only to just compensation. Just as in that context, MTE owners should be entitled to actual and documented costs reasonably incurred. Also, a preferred provider will likely have a rough sense of the expenses the MTE owner incurs to allow access to the MTE and whether those expenses roughly correspond to the revenue share or fees it will pay the MTE owner under the preferred provider agreement. For purposes of enforcement, the Commission could also adopt a presumption that revenue sharing and other similar types of agreements are not cost-based and therefore are prohibited unless the preferred provider can show that they are reasonably related to the MTE owner's actual costs. Ultimately, if the Commission concludes that such restrictions on revenue sharing and similar agreements will be too difficult to enforce, it should just ban them altogether, by prohibiting providers from entering them.

The Commission should also consider ways to address excessive access fees that MTE owners apply to all providers, rather than simply to preferred providers in exchange for some form of exclusivity. These generally-applicable fees inhibit broadband investment and increase the cost of broadband and other services in MTEs. The Commission could prohibit providers from paying these types of fees too. Theoretically, such a prohibition could cause an MTE owner to refuse to allow any provider to deploy service in the MTE. But that result seems very unlikely given the MTE owner's incentive to retain tenants and the fact that some states, including Connecticut, New York, and Texas, prohibit property owners from demanding

unreasonable payments from tenants or providers for allowing access to the property owner's property.¹⁴

B. Require Providers to Disclose Publicly in Plain English the Existence and Content of Preferred Provider Agreements.

The Commission also should require providers to disclose publicly that they have entered a preferred provider agreement with an MTE owner (including an exclusive wiring, exclusive marketing, bulk billing, or revenue sharing arrangement) and the content of that agreement. Most importantly, this disclosure should be made to current and prospective tenants in the MTE, noting the existence of the preferred provider agreement and providing a plain English description of its terms, including whether the MTE owner financially benefits when the tenant subscribes to service from the preferred provider. The disclosure also should clarify that the agreement does not prevent tenants from ordering on-net service in the MTE from other providers. This disclosure should be required in any marketing materials the service provider supplies to the property owner, tenants, or prospective tenants.

The preferred provider also should be required to make a similar disclosure to competing providers seeking access to the MTE to provide service. As noted, CenturyLink has been told repeatedly that tenants in certain MTEs are “required” to use the MTE owner’s preferred provider, are “not eligible for service” from competing providers, and that “[n]o other vendors are allowed on mall property.”¹⁵ If these statements accurately characterize the applicable

¹⁴ See Conn. Gen. Stat. § 16.247l (prohibiting MTE owners from demanding or accepting payment for telecommunications access beyond reasonable compensation for that access); NY CLS Pub. Ser. § 103 (prohibiting commercial landlords from demanding or accepting payment in exchange for permitting access in excess of reasonable amounts, as determined by commission regulation); TX Utilities Code § 54.259 (prohibiting public and private property owners from demanding or accepting unreasonable payments from tenants or utilities for allowing property access).

¹⁵ See Attachments 3, 4, 6, 7.

preferred provider arrangements, they violate Commission rules. If they are not an accurate characterization, the MTE owner and/or preferred provider are grossly misrepresenting the preferred provider arrangements to CenturyLink and other competing providers. Thus, it is critical that this disclosure requirement extend to competing providers, so they can accurately inform MTE tenants requesting service of their rights.

These disclosure requirements will reduce the likelihood of MTE tenants and competing providers being given inaccurate information, enable tenants to make informed decisions when seeking communications services in an MTE, allow prospective MTE tenants to factor into their real estate decisions the availability (or lack thereof) of multiple facilities-based services in the MTE, and potentially encourage MTE owners to adopt more pro-competitive policies.

C. Preclude Providers from Entering into a Preferred Provider Agreement in an MTE Unless Competing On-Net Services Are Permitted.

In recent months, CenturyLink's most significant hindrance in MTEs has been gaining on-net access to shopping malls. It is understandable that space may be limited in conduits and risers in certain older properties, making it difficult to accommodate facilities-based access by all providers. But the phenomenon of MTE owners refusing to allow CenturyLink on-net access is widespread and seems to have little, if any, connection to capacity constraints in the property's infrastructure. Rather the MTE owner in these situations appears to be dictating, presumably consistently with its preferred provider arrangement, that only its preferred provider can offer on-net services into the MTE.

The Commission therefore should clarify that prohibited exclusive access arrangements include those that do not explicitly permit competing providers to obtain on-net access to the MTE. Such on-net access should be available regardless of technology, including fiber-optic

cable, electric power lines within the MTE, and fixed wireless services. CenturyLink is investigating all these technologies as potential means to bring gigabit speeds to MTEs.

D. Reaffirm that if a Provider Controls the Ducts, Conduit, and Rights-of-Way in an MTE, It Must Provide Just, Reasonable, and Nondiscriminatory Access to that Infrastructure.

As noted, some MTE owners appear to have ceded control of the MTE communications infrastructure to their preferred provider. If that is the case, that provider is appropriately treated as a utility subject to the requirements of Section 224 and should be required to provide nondiscriminatory access to that infrastructure on just and reasonable rates, terms, and conditions.¹⁶

In this context, “control” includes situations in which the property owner has delegated to its preferred provider authority and responsibility for managing all communications services in the MTE, including requests from competing providers to deploy facilities. Such delegation puts the preferred provider in the role of gatekeeper, with the incentive and ability to deny reasonable access to the MTE. CenturyLink understands that a property owner may prefer to delegate these responsibilities to a service provider, so that it can focus on other aspects of its business. When it does so, however, the property owner creates the potential for anticompetitive conduct by that service provider that is not in the best interests of tenants or public policy. In these situations, the Commission must step in to ensure that the preferred provider permits access on just, reasonable, and nondiscriminatory terms for the benefit of the tenants in that MTE. The Commission also should consider adopting a shot clock and expedited enforcement mechanism to ensure timely and reasonable access to that property.

¹⁶ 47 U.S.C. § 224; 15 FCC Rcd at 23017 ¶ 76.

E. Consider Regulating MTE Access Services That Are the Exclusive Means of Reaching MTE Tenants.

Given the explosion of competition in telecommunications markets, the Commission should reserve regulation, and especially new regulation, for situations in which market forces are unable to discipline a provider's rates, terms, and conditions. That is the case in MTEs where the MTE owner limits facilities-based access to a single, preferred provider.

As discussed, CenturyLink recommends that the Commission address this market failure by adopting a targeted prohibition on preferred provider agreements that do not explicitly permit on-net access to the MTE. If the Commission declines to adopt this restriction and allows providers to continue to be the sole source providers of on-net access to MTEs, thereby forcing competing providers to buy the preferred provider's wholesale access service, the Commission should consider regulating that service. Such regulation should include a requirement that these services be offered on just, reasonable, and nondiscriminatory rates, terms, and conditions. It also should include a shot clock to ensure timely provision of service and an enforcement mechanism to give competing providers a forum to resolve disputes and ensure compliance with these regulatory requirements.

V. THE COMMISSION SHOULD EXTEND ITS CURRENT PROHIBITION ON EXCLUSIVE ACCESS ARRANGEMENTS TO ROOFTOP FACILITIES.

The Commission should extend to rooftop facilities its prohibition on telecommunications carriers and covered MVPDs entering exclusive access arrangements.¹⁷ CenturyLink is constantly looking for the most cost-effective way to upgrade broadband service to an existing building. Sometimes that means rewiring the MTE with fiber, but other times such

¹⁷ See Notice at ¶ 21.

rewiring may be too expensive or may not even be physically possible because the conduit is full.

CenturyLink therefore is exploring other alternatives, including millimeter wave services.¹⁸ Such fixed wireless technologies are not feasible, however, if another provider has been given exclusive access to the rooftop facilities in an MTE. CenturyLink has seen a recent trend of providers inserting “stealth” clauses in contracts with building owners granting themselves exclusive rooftop access. The Commission should halt this anticompetitive practice now by prohibiting providers from entering into agreements that include such exclusivity provisions.

VI. CONCLUSION

For all these reasons, the Commission should adopt the rule changes recommended in this submission to restore an appropriate balance between encouraging facilities-based investment and enabling meaningful competitive choice in MTEs. Such decisive action will promote facilities-based investment and competition for the benefit of those Americans who live and work in MTEs.

Respectfully submitted,

CENTURYLINK

By: /s/ Craig J. Brown
Craig J. Brown
1025 Eldorado Blvd
Interlocken 2000 Fl 3 #23-418
Broomfield, CO 80021
303-992-2503
Craig.J.Brown@centurylink.com

Its Attorney

August 30, 2019

¹⁸ Similar considerations may come into play in MTEs in which CenturyLink has no facilities.

ATTACHMENT 1

From: [REDACTED]@am.jll.com>
Sent: Thursday, July 18, 2019 4:24 PM
To: [REDACTED]@level3.com [REDACTED]@am.jll.com>
Cc: [REDACTED]@am.jll.com [REDACTED]@level3.com>;
[REDACTED]
Subject: RE: CenturyLink: New Telecom Service for [REDACTED] at Ka Makana Ali'i

I have responded to Chris already. Per our ground lease telecom and internet services must be provided by [REDACTED]. We are not permitted to allow any other providers for these services at this time.

[REDACTED]
Vice President | Retail Management
General Manager | Ka Makana Ali'i
JLL

[REDACTED]
[REDACTED]
[REDACTED]@am.jll.com
jll.com

From: [REDACTED]@centurylink.com>
Sent: Tuesday, July 16, 2019 5:52 PM
To: [REDACTED]@am.jll.com>
Cc: [REDACTED]@am.jll.com [REDACTED]@am.jll.com>; [REDACTED]
[REDACTED]@centurylink.com>; [REDACTED]
Subject: [EXTERNAL] RE: CenturyLink: New Telecom Service for [REDACTED] at Ka Makana Ali'i

Deven:
Mahalo for the quick response.

Stephanie:
It is my understanding the [REDACTED] from CenturyLink may have already contacted with you regarding this request.

Adding [REDACTED] and [REDACTED], to this e-mail so that we're all on the same page.

Please advise if CenturyLink is allowed to provide telecom services for [REDACTED] at Ka Makana Ali'i.
If yes, I will have my engineer contact you or Rick to schedule a site survey.

Thanks,

[REDACTED]
Planner
Field Operations
CenturyLink
550 Paiea Street, Suite 238
Honolulu, HI 96819
[REDACTED]
[REDACTED]@centurylink.com

[REDACTED]@am.jll.com>
Sent: Tuesday, July 16, 2019 5:33 PM
[REDACTED]@level3.com>

ATTACHMENT 1

[REDACTED]@am.jll.com [REDACTED]@am.jll.com>
Subject: RE: CenturyLink: New Telecom Service for [REDACTED] at Ka Makana Ali'i

Hi Alan,

By copying of this e-mail, I'm putting you in touch with [REDACTED], the on-site general manager at Ka Makana Ali'i, and [REDACTED], the on-site operations manager.

Please communicate through them on this matter – my understanding is that telecommunications at this site are limited to one service provider only ([REDACTED]) by DHHL, so please ensure you connect with them to discuss prior to deploying any equipment on-site for your client.

Thank you!

Mahalo,

[REDACTED]
Vice President, Retail Brokerage
JLL
1585 Kapiolani Blvd., Suite 1750
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

jll.com

[REDACTED]@centurylink.com>
Sent: Tuesday, July 16, 2019 5:29 PM
[REDACTED]@am.jll.com>
[REDACTED]@centurylink.com>

Subject: [EXTERNAL] CenturyLink: New Telecom Service for [REDACTED] at Ka Makana Ali'i

Deven:

[REDACTED] parent company, [REDACTED], has signed a national contract with CenturyLink (CTL) to provide telecom services for various stores throughout the country. One of the stores is the [REDACTED] store at Ka Makana Ali'i.

CTL's typical network deployment in business buildings and malls is to build fiber optic cable (FOC) into a common telephone room, install network electronic equipment in the common telephone room, and distribute Cat5 or fiber cable to the customer suite.

It has been my experience that some malls prefer to sole source the telecom services for their tenants vs allowing the tenant subscribe to services from a local telecom carrier; i.e. Hawaiian Telcom, Spectrum, CenturyLink. I had heard that this may be the case at Ka Makana Ali'i.

If CenturyLink is allowed to provide telecom services at Ka Makana Ali'i, I would like to schedule a site survey to determine the scope of work that would be required to install the fiber optic cable, network equipment and distribution cabling. Please advise if this is possible. If yes, I will have one of my engineers contact you to schedule a date.

If you have any questions, please contact me.

Sincerely,

[REDACTED]
Planner

ATTACHMENT 1

Field Operations
CenturyLink
550 Paiea Street, Suite 238
Honolulu, HI 96819

██████████@centurylink.com

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Achieve Ambitions



ATTACHMENT 2

From: [REDACTED]
Date: Monday, May 6, 2019 at 3:14 PM
To: [REDACTED]@joemaxtelecom.com>
Subject: RE: CenturyLink Site Surveys at 400 & 610 Commons Way, Bridgewater, NJ

Good afternoon John,

With this being a [REDACTED] mail, we cannot authorize access to MPOE without CLINK having a ROE Access agreement.

Thank you,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]@joemaxtelecom.com]
Sent: Monday, May 06, 2019 2:28 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: CenturyLink Site Surveys at 400 & 610 Commons Way, Bridgewater, NJ

Good Afternoon,

My name is [REDACTED] and I represent CenturyLink (Level3 Communications). I am emailing you today because CenturyLink has two sold orders from [REDACTED] at the two above mentioned locations (400 & 610 Commons Way, Bridgewater, NJ). With that being said, we will need to complete site surveys at these two locations to determine what paths we will utilize to bring new CenturyLink fiber into the buildings. We will require access to each building's "point of entry" room, and any telephone and/or riser closets within the building.

I would like to set up these two site surveys sometime this week through [REDACTED]. Please give me a call at [REDACTED] to discuss in further detail how we proceed with scheduling the aforementioned site surveys.

Thanks,
[REDACTED]
JoeMax Telecom
[REDACTED]@joemaxtelecom.com
[REDACTED]



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ATTACHMENT 3

From: [REDACTED]@brookfieldpropertiesretail.com>

Date: Monday, April 15, 2019 at 4:02 PM

To: [REDACTED]@joemaxtelecom.com>

Cc: [REDACTED]@joemaxtelecom.com>, [REDACTED]@joemaxtelecom.com>, [REDACTED]@joemaxtelecom.com>

Subject: RE: CenturyLink at 400 Commons Way, Bridgewater, NJ ([REDACTED])

John,

Thank you for the email. Unfortunately I am going to have to deny you access as we require all tenants to use [REDACTED].

From: [REDACTED]@joemaxtelecom.com>

Sent: Monday, April 15, 2019 3:55 PM

To: [REDACTED]@brookfieldpropertiesretail.com>

Cc: [REDACTED]@joemaxtelecom.com>; [REDACTED]@joemaxtelecom.com>; [REDACTED]@joemaxtelecom.com>

Subject: CenturyLink at 400 Commons Way, Bridgewater, NJ ([REDACTED])

[EXTERNAL]

Good Afternoon Brian,

My name is [REDACTED] and I represent CenturyLink (Level 3 Communications). We have received notice of [REDACTED] recently placed order and we would like to conduct a visual site survey this at your building (400 Commons Way, Bridgewater, NJ). We will require access to the P.O.E. room (Point of Entry), which is typically the building's main telephone room. This is where the communication lines enter the building from the street. We will also require access to any riser closets and the customer data/server room, which is where we will be proposing to terminate the fiber. Please note that no physical work will be performed on the day of the site survey. This survey is strictly a preliminary measure to determine a continuous path from the P.O.E to the customer space.

Please let me know if you are available Thursday, April 18th at 9:00 am to conduct this survey. Thank you for your time.

Regards,

[REDACTED]
JoeMax Telecom

[REDACTED]@joemaxtelecom.com



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ATTACHMENT 4

██████████@brookfieldpropertiesretail.com>

Sent: Thursday, June 20, 2019 8:02 AM

██████████@level3.com>

Subject: RE: Order - 400 Commons Way, Bridgewater NJ

Terri,

Thank you for reaching out but ██████████ is not eligible for service from any vendor other than ██████████ who is the malls vendor. The outparcel buildings could use other services but again not those inside the mall. ██████████ will have to reach out to ██████████.

Thank You,

██████████
Operations Manager | Bridgewater Commons
Retail

Operations Manager | Bridgewater Commons
Retail

400 Commons Way Suite 100, Bridgewater, NJ 08807

██████████@brookfieldpropertiesretail.com
www.brookfieldpropertiesretail.com

**Brookfield
Properties**



██████████@centurylink.com>

Sent: Wednesday, June 19, 2019 7:31 PM

██████████@brookfieldpropertiesretail.com>

Subject: Order - 400 Commons Way, Bridgewater NJ

[EXTERNAL]

Hi Brian,

I believe you had heard from ██████████ with CenturyLink about getting an Access Agreement for a fiber order. CenturyLink now has another customer order for ██████████. We are working towards setting up the installation. Prior to the installation taking place, a CenturyLink engineer will request an appointment for a site survey with you and/or your building engineer.

Engineered drawings will then be drafted and once completed, will be submitted for your review and approval. I am requesting confirmation that you are aware of this request. Please note, no work will begin until the engineered drawings are reviewed and you provide approval for us to proceed.

Would you like me to send you a draft Access Agreement or do you prefer to send yours? We had completed one with ██████████ for 77 K St NW, Washington DC- if you want to use the same one.

Thanks for your time.

██████████
Building Access Manager
CenturyLink
6801 Gaylord Pkwy, S-300
Frisco, TX 75034

[REDACTED]
[REDACTED]@centurylink.com



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ATTACHMENT 5

From: [REDACTED]@brookfieldpropertiesretail.com>
Sent: Wednesday, June 19, 2019 4:23 PM
To: [REDACTED]@level3.com>
Subject: RE: Glendale Galleria

Yes, [REDACTED] has an exclusive here at the Glendale Galleria.

[REDACTED]
Administrative Assistant - Operations | Glendale Galleria & Glendale Office Tower
Retail
Administrative Assistant - Operations | Glendale Galleria & Glendale Office Tower
Retail

100 W. Broadway Suite 100, Glendale, CA 91210

[REDACTED]
[REDACTED]@brookfieldpropertiesretail.com
www.brookfieldpropertiesretail.com

**Brookfield
Properties**



From: [REDACTED]@centurylink.com>
Sent: Wednesday, June 19, 2019 2:10 PM
To: [REDACTED]@brookfieldpropertiesretail.com>
Subject: Glendale Galleria

[EXTERNAL]

Hi Sherry,

Thanks again and if you wouldn't mind confirming [REDACTED] has the exclusive, I'd appreciate it in order to alleviate a similar scenario in the future.

Best,

[REDACTED]
Building Access Manager
CenturyLink Communications
14452 Franklin Ave.
Tustin, CA 92780

[REDACTED]
[REDACTED]@centurylink.com



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ATTACHMENT 6

[REDACTED]@macerich.com>

Sent: Thursday, June 20, 2019 10:31 AM

[REDACTED]@level3.com>

Subject: Re: Building Access Agreement for CenturyLink | 1961 Chain Bridge Rd

Hi Karen,

Macerich has a nation wide contract with [REDACTED]. No other vendors are allowed on mall property. [REDACTED] should call [REDACTED].

Thanks,
Mike

Sent from my iPhone

[REDACTED]@centurylink.com> wrote:

Mike,

Are you the proper contact for this?

Please advise.

Thank you,

Karen

From: [REDACTED]

Sent: Thursday, May 30, 2019 10:21 AM

To: [REDACTED]@macerich.com [REDACTED]@macerich.com>

Subject: RE: Building Access Agreement for CenturyLink | 1961 Chain Bridge Rd

Mike,

Trying again. Please confirm your receipt of the emails below and provide status of review of the access agreement and drawings at your earliest convenience. We are working under a due date to provide these telecom services to your tenant and your assistance with this is greatly appreciated.

Thanks so much,

Karen

[REDACTED]
Senior Building Access Manager

[REDACTED]
[REDACTED]@centurylink.com

<image001.jpg>

ATTACHMENT 6

From: [REDACTED]

Sent: Friday, May 24, 2019 2:33 PM

To: [REDACTED]@macerich.com [REDACTED]@macerich.com>

Subject: RE: Building Access Agreement for CenturyLink | 1961 Chain Bridge Rd

Importance: High

Mike,

Please confirm your receipt of the email below and status me on review of the access agreement and drawings at your earliest convenience.

Thank you!

Karen

ATTACHMENT 7

[REDACTED]@brookfieldpropertiesretail.com>

Sent: Monday, July 29, 2019 1:17 PM

[REDACTED]@Level3.com>

[REDACTED]@level3.com

[REDACTED]@level3.com>; [REDACTED]

[REDACTED]@Level3.com>

Subject: RE: [REDACTED]

[REDACTED] is the contractor for cable, phone, and internet on property, exclusively, tenants are required to use [REDACTED].

[REDACTED]
Senior Operations Manager | The Shops at La Cantera
Retail

15900 La Cantera Parkway, Suite 6698, San Antonio, TX 78256

[REDACTED]@brookfieldpropertiesretail.com

www.brookfieldpropertiesretail.com

Brookfield
Properties



[REDACTED]@centurylink.com]

Sent: Monday, July 29, 2019 3:10 PM

[REDACTED]@brookfieldpropertiesretail.com>

[REDACTED]@centurylink.com

[REDACTED]@centurylink.com>; [REDACTED]

[REDACTED]@centurylink.com>

Subject: RE: [REDACTED]

[EXTERNAL]

Sorry Just [REDACTED]

[REDACTED]@brookfieldpropertiesretail.com>

Sent: Monday, July 29, 2019 2:57 PM

[REDACTED]@Level3.com>

[REDACTED]@level3.com

[REDACTED]@level3.com>; [REDACTED]

[REDACTED]@Level3.com>

Subject: RE: [REDACTED]

We don't have a [REDACTED]

[REDACTED]
Senior Operations Manager | The Shops at La Cantera
Retail

15900 La Cantera Parkway, Suite 6698, San Antonio, TX 78256

[REDACTED]@brookfieldpropertiesretail.com

www.brookfieldpropertiesretail.com

Brookfield
Properties



[REDACTED]@centurylink.com]

Sent: Monday, July 29, 2019 2:52 PM

[REDACTED]@brookfieldpropertiesretail.com>

[REDACTED]@centurylink.com [REDACTED]@centurylink.com>; [REDACTED]

[REDACTED]@centurylink.com>

Subject: RE: [REDACTED]

[EXTERNAL]

Hello again Thomas.

Looks like we are being asked to also deliver services the [REDACTED] also.

Can you please let me know when you will have a spare moment to swing by and perform a quick couple surveys?

Thanks

[REDACTED]
CenturyLink OSPE
[REDACTED]

From: [REDACTED]

Sent: Monday, July 22, 2019 1:28 PM

To: [REDACTED]@brookfieldpropertiesretail.com>

Cc: [REDACTED]@level3.com>; [REDACTED]@level3.com>

Subject: [REDACTED]

We have an order for [REDACTED] (suite [REDACTED]). We just completed the construction for compass bank. I would like to set-up a time to conduct a brief survey of the riser-room feeding the building in which [REDACTED] is located. Please let me know and I will swing by.

Thanks

[REDACTED]
CenturyLink OSPE
[REDACTED]

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